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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,007	02/05/2004	David C. Salyer SR.	1413	4102

7590 12/23/2004

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EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
3671	

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/772,007	Applicant(s) SALYER, DAVID C. <i>ST</i>
	Examiner Raymond W. Addie	Art Unit 3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 20 October 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 10-17 is/are allowed.

6)  Claim(s) 1-9 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 05 February 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_ .  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_ . 5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 2, 5-9 are rejected under 35 U.S.C. 102(a) as being anticipated by Kiedaisch et al. # 6,551,010 B1.

Kiedaisch et al. discloses an energy absorbing safety barrier system (10) comprising:

A plurality of individual support structures (14), in overlapping fashion, which can comprise:

A separate barrier wall and distinct support structures which serve only to support fender Elements/fins (16) in place along road (12).

A plurality of fins (16) affixed to said support structures (14).

Said plurality of fins (16) being deformable for dissipating energy generated by impact of a vehicle.

Said plurality of fins being disposed at an acute angle to the direction of traffic and attached to the retaining wall via fasteners (64).

Said fins are equidistantly spaced apart, such that when a 1<sup>st</sup> fin is displaced the motion generates a cascade of displacement, by friction, of said plurality of fins adjacent said first fin, thereby dissipating energy away from said vehicle. See col. 1, cols. 3-5.

In regards to claim 5, although Kiedaisch et al. does not explicitly recite welding the fins to the plurality of plates, Kiedaisch et al. clearly discloses alternative embodiments, wherein a separate barrier wall supports the support structures (14) via fasteners (64), which are integral with the barrier wall. Further, Kiedaisch et al. clearly discloses the support structures could alternatively be made of materials, other than concrete, and can constitute individual structures having overlapping ends, thereby supporting the plurality of fins at a desired height adjacent a roadway. Hence, it is inherent Kiedaisch et al. discloses the use of a support structure (14), such as a guard rail or metal plate, which are known in the art, mounted to a barrier wall, to support a plurality of fins, via a plurality of fasteners (64), which inherently would have to be welded to the metallic support structure (14).

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kiedaisch et al.

# 6,551,010 B1 in view of Bastis et al. # 3,140,885.

Kiedaisch et al. discloses the use of support structures (14), in plate form, that can be concrete or alternative materials, and comprises "a separate barrier wall and distinct

support structures which serve only to support fender elements (16)"; but does not disclose both planar and non-planar margins. However, Bastis et al. teaches support plates (10) such as guard rails can be interconnected via a plurality of overlapping lap joints to permit "nesting" of the support plate ends, thus forming an elongated barrier for use near roadways, as illustrated in Fig. 1. See col. 1. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the support plates of Kiedaisch et al. nested lap joints, as taught by Bastis et al., in order to secure the overlapping ends to a barrier wall, as reasonably suggested by Kiedaisch et al. See col. 1.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kiedaisch et al. # 6,551,010 B1 in view of Kiedaisch et al. # 6309140 B1. Kiedaisch et al. '010 discloses an energy absorbing system (10) comprising a plurality of fins (16) mounted to a plurality of support plates (14), having overlapping ends, and can be made of concrete or alternative materials, but does not disclose the use of steel. However, Kiedaisch et al. '140 teaches an energy absorbing barrier system (10) comprising a plurality of overlapping fins (58) mounted to a barrier wall (18) via a plurality of support plates (144), which are made of A36 (mild) steel. See col. 3, ln. 20-col. 4, ln. 50; Col. 7, Ins. 20-65. Therefore, it would have been obvious to one of

ordinary skill in the art, at the time the invention was made to provide the energy absorbing system of Kiedaisch et al. '010 with the overlapping steel plates of Kiedaisch et al., in order to better secure the fin assembly to the retaining wall.

***Allowable Subject Matter***

4. Claims 10-17 are allowed.

***Response to Arguments***

5. Applicant's arguments filed 10/20/04 have been fully considered but they are not persuasive. Applicant argues in favor of claim 1 by stating "Kiedaisch et al. ('010) discloses an anchor system (62) affixed to a support structure (14), but the anchor system is not affixed in an overlapping manner, demonstrated by the linear distance separating each respective anchor system (62), seen in Figs. 2, 3, 7...The support structure (14) of Kiedaisch et al. ('010) is a retaining wall (see Figs. 1, 2, 5) and not a plurality of plates affixed to a retaining wall...Therefore, Kiedaisch et al. ('010) fails to disclose a plurality of plates affixed to a retaining wall in an overlapping manner". However, the Examiner does not concur.

Kiedaisch et al. '010 explicitly recites "support structure (14) may be made from a variety of alternative materials...and may be formed...in overlapping fashion...system (10) may alternatively utilize a separate barrier wall and distinct support structures

which serve only to support fender elements (16) in place". The fender elements constituting the claimed "fins". See col. 3, Ins. 37-59.

Hence, it is clear Kiedaisch et al. '010 discloses all portions of the support structure (14) are in overlapping fashion, and is not limited to the preferred embodiments highlighted by the Applicant.

Therefore, the arguments are not persuasive and the rejection is maintained.

Applicant then argues "Kiedaisch et al. ('010) fails to disclose a system having fins depending from plates and that the fins...are deformable".

However, the Examiner does not concur.

Kiedaisch et al. '010 explicitly discloses "As shown by Fig. 7, vehicle (86) initially contacts...fender element (16A)...As a result...fender element (16A) **flexes in both directions**...to also absorb energy...This reaction continues between fender elements (16C, 16D) and so on until the energy from vehicle (86) is absorbed by the system (10)".

Therefore the argument is not persuasive and the rejection is maintained.

Applicant then argues in favor of Claims 2-9 by stating "The key (64) of Kiedaisch et al. ('010) is cited as disclosing the "fasteners of the present invention recited in Claim 2...However, the key...described as a 'T-shaped protuberance...'; the fasteners of the present invention secure the plates to the retaining wall, but are not embedded or

formed as part of the construction of the retaining wall...Therefore, Kiedaisch et al. ('010) fails to disclose the fasteners used for affixing plates to a retaining wall of claim 2 and therefore fails to disclose every element of Claim 2 as required".

However, the Examiner does not concur.

Firstly, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Claim 2 only requires "said plurality of plates are affixed to said retaining wall via fasteners". Whether or not the prior art discloses fasteners embedded in the retaining wall or integrally formed as part of the retaining wall, is irrelevant to the claimed limitation, which does not preclude how the plates are affixed to the retaining wall, and only requires the use of fasteners to connect the plates to the retaining wall.

In this case, a key (64) can have a T-shaped cross-section, such that the one portion of the key (64) is embedded or otherwise fastened to the retaining wall, and another portion of the key (64) provides plate sections in overlapping relationship with plate (66), thereby providing a means to fasten the fins (16) to the retaining wall.

Therefore, the arguments are not persuasive and the rejection is upheld.

Applicant then argues in favor of claim 3 by stating "The present invention recites a margin that is vertically disposed and offset from the plane of the plate so as to overlap the planar margin of an adjacent plate...The offset and planar margins are NOT joined together...And the margins are not supported by posts as the device in Bastis et al. is supported...the combination...fails to disclose, teach, suggestion of very claim element of claim 3 as required...".

However, the Examiner does not concur.

Claim 3 recites "said plurality of plates comprises a vertically disposed non-planar margin offset from a plane of said plate for overlapping with a vertically disposed planar margin of an adjacent said plate".

In this case Claim 3 is seen to require a vertically disposed non-planar margin, that is offset from a plane of said plate for overlapping with a vertically disposed planar margin of an adjacent said plate

It is noted that Claim 3 does not preclude the structure disclosed by either Kiedaisch et al. '010 nor that of Bastis et al.; since both teach a non-planar margin offset from a plane of the plate, in order to permit a nested engagement between the plates. Kiedaisch et al. '010 explicitly recites the support structure could be individual plate-like elements fastened to a retaining wall, and could be made of a variety of alternative materials. Further, Bastis et al. teaches support plates (10) such as guard rails can be interconnected via a plurality of overlapping lap joints to permit "nesting" of the support plate ends, thus forming an elongated barrier for use near roadways, as illustrated in

Fig. 1. See col. 1. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the support plates of Kiedaisch et al. nested lap joints, as taught by Bastis et al., in order to secure the overlapping ends to a barrier wall, as reasonably suggested by Kiedaisch et al. See col. 1.

Hence, the argument is not persuasive and the rejection is maintained.

Applicant then argues in favor of Claim 4 by stating "if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination...There is no suggestion as to the desirability of any modification of the references to describe the present invention".

However, the Examiner does not concur.

Claim 4 requires "each of said plurality of plates is fabricated from mild steel". Kiedaisch et al. discloses the support structure (14) can be made from a variety of alternative materials, but does not disclose the use of mild steel. However, Kiedaisch et al. '140 teaches an energy absorbing barrier system (10) comprising a plurality of overlapping fins (58) mounted to a barrier wall (18) via a plurality of support plates (144), which are made of A36 (mild) steel. See col. 3, ln. 20-col. 4, ln. 50; Col. 7, lns. 20-65.

Further, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without

specifically pointing out how the language of the claims patentably distinguishes them from the references.

Therefore, the arguments are not persuasive and the rejection is maintained.

Finally, Applicant provides no arguments to the rejections of claims 5-9. Hence, it appears as though Applicant is admitting claims 5-9 provide contain no patentable features or issues for further consideration.

### ***Conclusion***

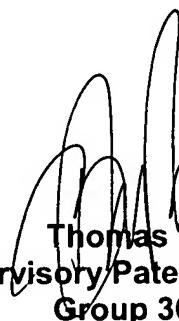
**5. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 703 305-0135. The examiner can normally be reached on 8-2, 6-8.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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12/21/04